Gallipolis Journal.

A FAMILY NEWSPAPER, DEVOTED PARTICULARLY TO THE INTERESTS OF GALLIA COUNTY.

R. L. STEWART, EDITOR AND PROPRIETOR.

Gallipolis Journal.

"EQUAL AND EXACT JUSTICE TO ALL MEN, OF WHATEVER STATE OR PERSUASION, RELIGIOUS OR POLITICAL."—JEFFERSON.

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Selected Poetry.

MUSIC.

There is something in sweet music,
Cheering to the troubled heart—
Soothing o'er the wounds of sorrow,
Drying all the tears that start.

When the spirits bowed in sadness,
Lowly by afflictions rod,—
It will bring us back to gladness,
It will fix our thoughts on God.

O, in music there is something,
That unto the soul doth speak,
Whispering of *some* high attainments,
In God's grace which we should seek.

It lifts up our hearts for heaven,
From this world of grief and woe;
Then give me music, plaintive music,
For its strains do soothe me so.

☞ The following letter from Judge Nash, in review of Senator Sumner's late speeches in Congress, though at greater length than we would have preferred, will prove of sufficient interest to our readers to justify us in its publication. The ground taken by the Judge is certainly tenable, and we commend it to the attention of all who feel an interest in the future welfare of the Republic:

GALLIPOLIS O Dec. 28 1863.

HON. CHAS. SUMNER.—*Sir*: I received your two speeches, and have read them with with much interest. All you say as to the origin of this cursed rebellion and its relation to slavery, is true.

But I am surprised at your views in relation to the power of the government over slavery; and more yet, at your citation of the example of Marius. In antiquity there was no law of nations, as we understand those terms. The laws of war, were then simply the laws of force, carried out by the mere will of the power or person wielding the same. The law of nations, is of modern origin, growing up under the influence of christianity over the conduct and intercourse of nations; it is christianity, modifying the barbarism of antiquity, by which a public enemy, when captured, or conquered, became a slave; the slave of the captor. In the middle age, prisoners of war were allowed to be redeemed for a sum of money, and now they are subject to be exchanged according to the modern usages of war. This is the rule by which our nation is governed, while carrying on this war against the rebellion. It was unnecessary for you to go so far back in history, for an example, stringent enough for rebels. You can find modern treatises, which lay down the doctrine, that rebels have no rights, that they forfeited all their right to life, liberty, and property, and that they are not entitled to the protection of the laws, relating to prisoners of war. But we know that this is not the law, as now settled by intelligent publicists of our day. It is now held, that rebels taken in arms, are entitled to the same treatment as other prisoners of war; they can neither be made slaves, nor robbed or hung. Did one ever hear in modern times, of a general massacre of rebels taken in arms? If it has ever been practised, it has been regarded with execration by all christian nations. The proceedings of Russia in Poland, are condemned by the moral sentiment of christian Europe.

But there is one consideration wholly overlooked by many in the discussion of this question. The government of the United States is organized under a written constitution, depriving Congress and the Executive of powers, which are liberally exercised by other governments not so restricted. We cannot do what England and France would have a clear right to do, their powers not being bound down, and restricted by a written charter or constitution. With them, the law making power is supreme; with us it is the constitution. Yet in England, the Queen cannot deprive a traitor of his life, liberty, or property, except upon conviction in a court of justice. Parliment may accomplish the purpose by an act of pains and penalties, which our Congress is prohibited from passing.

The Constitution declares that no person shall be deprived of life, liberty, or property, save by due course of law; and even a traitor cannot be convicted of treason, unless the overt act of treason is proved by the testimony of two witnesses. These provisions were inserted in the Constitution for the protection of the person accused of this high crime, and no one can deprive him of its protection. How then under the Constitution, are we to deprive a person eveu of his property in slaves, until after trial and conviction? Has Congress, or the President, or any person acting under their authority, power to seize the property of a rebel, or a traitor and appropriate it to the benefit of the United States without trial and conviction? If so, then Congress can pass what in England, is called a bill of pains and penalties, by which a person was without trial, convicted of treason, and forfeiture of property declared. But it is admitted that Congress can pass no such act; and yet it seems to be implied by some, that the President, or the General in the field can do, what Congress cannot do. If this is the law, of what use are all these stringent provisions in favor of the accused, since they can be set aside by the President or a General in the field.

After rebels are taken in arms, they cannot constitutionally be hung, or otherwise punished as traitors, until after trial and conviction. No more can they be deprived of their property, than of their lives without such conviction, since the same clause in the Constitution protects both alike. The Constitution protects property without discriminating between one kind of property and another.

Laws creating rights of property, are municipal laws, and hence are exclusively within state jurisdiction. No power is granted to the United States to declare articles as things, to which men may claim the title as right, called property. The Constitution assumes that there is such a right as the right of property, and seeks to protect it. Hence Congress has no power under the constitution, to declare what shall be, or what shall not be property in Massachusetts or South Carolina. That depends upon the laws of the respective States. Each state, for itself, settles the things, in which a right of property can be claimed within its jurisdiction; for it is a well settled rule of law, that, the laws of one state can have the force of law, only within its own territory, and not beyond the same, only as by the law of comity, another state may by its own law, give force to it. It was on this ground that Lord Mansfield based his famous decision in the Summerset case, holding a slave free the moment he came within the jurisdiction of English law. It was on the admitted principal of this case, that it was deemed necessary to insert the clause in relation to fugitives from labor, as slaves; otherwise a slave escaping into a free state, would have been free as much as he is now, when coming with the consent of his owner. In the latter case, there is no injunction that the slave should be returned to his master. What is true of slave property, is true of all other property; the right of any one to it, is to be settled by the law of the place where it is situate. In this respect, there is no difference between title to a horse and title to a slave. Whatever is by the law of any State recognized as property, is such under the constitution of the United States, and entitled to its protection while within the jurisdiction of the State. It is by these laws of the respective States that the courts of the United States are governed in deciding on questions of property. Unless this was the law, Congress might interfere with rights of property in Massachusetts as well as in South Carolina, and declare that men should have no right of property in horses any more than in men. The same constitution which protects the right to the one in Massachusetts, against the action of the general government, protects the right to the other in South Carolina. The right of property is a creature of positive law of the recognized law of each county or State, and in this sense the common law is as much a positive law as the Statute law is. I am not here speaking of the rightfulness of slavery, or its morality. On that subject, I have some very decided opinions; and horse-stealing is as consistent as slave trading and slave owning. I could as consistently engage in the one as the other.—But positive law, the law of a State is one thing, and my opinions are another. As a man I must be governed by the one; as a Judge I must follow the other. If the validity of laws was dependent on the opinions of individuals, we should be involved in inextricable confusion. Many minds regard statutes of limitations and frauds as immoral, but that does not affect their validity.

Slavery then, in its relation to the general government, stands on the same footing as any other species of property. Congress can do nothing with the one, which it cannot do with the other. Its power to forfeit the title to a horse is just the same as its power to forfeit the title to a slave. Such is clearly the constitution, which we have sworn to support. Whether we wish it were otherwise or not, is now a matter of no importance. Such as it is we must abide by it, and carry it out in perfect good faith, whatever may be the consequence to which it brings us.

It is this constitutional restriction over the powers of Congress—it is this want of power in the general government which hampers its action over the subject of slavery, and over the punishment of traitors. Nor can it be claimed that the President or the Generals in the field can do what the combined action of Congress and the President could not do. The President and the Generals act under an authority delegated to each by the constitution and laws passed under it, and hence are bound down by its restrictions. A General cannot rightfully hang a traitor taken in arms without trial and conviction, any more than Congress can rightfully pass a law authorizing it to be done. Rebels taken in arms can only be dealt with as prisoners of war. If they are to be punished as traitors, they must be indicted, tried, and convicted of high treason, and be punished under a sentence to be pronounced by the court in accordance with the law fixing the penalty for that crime. Whatever power any nation has, by the laws of war over prisoners of war, the United States and the President, and the Generals have over rebels taken in arms, and rightfully no other or further power whatever.

It may be said that this is a narrow view of the question. It is a *constitutional* one; and the constitution was so framed of deliberate purpose to protect the individual against the exercise of arbitrary power and its terrible injustice. Its framers never intended that even *traitors* should in the United States, be dealt with as they had been in England, to say nothing of the practices common with other European Governments. The object was, to make this a government of *law*, and hold every person *innocent* of a crime, until convicted of that crime by due course of law. These restrictions on the power of the general Government over crime and criminals, has hitherto been considered as a mark of wisdom in its framers, and I doubt whether this opinion can now be changed, even to meet the necessities of this great emergency.

In such a Government, bound down by such a constitution, do you hold the example of Marius of any value? You say that as soon as he landed in Italy, he proclaimed liberty to the slaves, and that it is needless to add that Marius soon found himself in possession of Rome. Do you hold that what Marius did there, our Generals can do here? If so, why not carry out his practice to its full extent. If I recollect rightly, Marius when he had obtained possession of Rome, drew up his proscription list, on which were placed the names of certain persons, who, he thought, ought not to be permitted to live, and they were butchered in cold blood. Would you like the application of that part of the laws of war, as taught by the example of Marius? I could have imagined Wendell Phillips making use of such an illustration, because he is in principle a disunionist, a secessionist, holding that he is not bound by the constitution only so far as he deems it right; but I am amazed to see a statesman like yourself, acting under an oath to support that constitution, making use of arguments and illustrations, tending to educate the public mind to inaugurate the reign of mob law, instead of maintaining the supremacy of the constitution and the laws of the land. Such great questions as those, growing out of this rebellion, ought to be discussed on such grounds, and only on such grounds, as a court of justice can plant itself on to justify a judicial decision, and feel that it is *right*. The danger is, that the public mind will hold your propositions false, because it discovers the inconclusive character of your arguments. Many a good cause has been lost, because it was advocated on wrong grounds, supported by bad arguments.

You also say: "But there is another agency that may be invoked, which is at the same time under the constitution and above the constitution; I mean martial law." It cannot be above the constitution, if it is under it. Any power under the constitution is to be exercised in accordance with it. If martial law is compatible with the constitution, it is because the constitution makes it so. All the powers incident to the prosecution of a war, are granted by the constitution by the simple grant of the power to declare war and suppress insurrections. With this main grant of power, is carried all other powers necessary to carry the main power into execution; since martial law is a constitutional law, because it is one of the necessary means of carrying on war and suppressing insurrections. The extent of this power and the occasions for its exercise, are to be ascertained by a study of the laws of war which are a part of the law of nations as recognized by christian powers.—But is martial law what your language seems to imply? Is its declaration a suppression of law, or a change of remedies? Law in times of peace is to be administered in civil tribunals; but there are occasions where civil tribunals are too dilatory and not comprehensive enough. Martial law may then be established; but what is the effect of its declaration? Does it in any way effect the law of the land any further than to suppress civil *tribunals* and transfer all legal controversies before military courts? I think it will be found that its declaration does not change the law, but that it leaves the law where it found it, and courts martial in any dispute before them, are in their adjudications governed by the civil law. In the power then to establish martial law, there is implied no authority to change or repeal the civil law. The civil law as far as it goes, is still in full force and unimpaired. The military power can for the time being, require the population to act, like his army in obedience to his orders, and for any failures to comply, to enforce his orders or punish the offenders. He can also take property of citizens, and compel them to co-operate with the military force in defending or assailing a place. But it does not require the existence of martial law to justify the taking of private property for public use; the right to do this exists independent of the right to establish martial law.

When the declaration of martial law is withdrawn, the civil law is left just as it was before its declaration. Nor are rights of property in any way affected by it. Each one continues to hold his title to property unchanged and unimpaired. The fact that private property like horses, oxen, &c., have been pressed into government service for the time being, does not in the least impair the title of the owner to them. When discharged by the commander-in-chief, they still remain the property of the owner. What is true of this kind of property would be equally true of slave property. The employment of a slave in government work has never been held to work his emancipation. Nor can it make any difference whether this labor of the slave is obtained by coercion under military authority, or by contract with the owner. Force is only resorted to, when the services cannot be secured by contract, but the legal effect of the service must be the same in either contingency.

We have had an illustration of this view of the law. Gen. Wallace declared martial law over Cincinnati and Southern Ohio, when the rebels made their move on Cincinnati; so again by Gen. Burnside when the Morgan raid was made into Ohio.—Under this reign of martial law, I do not believe that any one supposed that their rights to property were affected by it, or that Gen. Wallace had, by virtue of such an order, acquired any right to change the laws of Ohio. He had a right to make soldiers of all that population and govern them as such, but his right over private property was just what it was before, the right to take it for public use, a compensation being paid, or secured by the Government of the United States. The same would be true, where martial law is declared by a conquering power in conquered territory.—The civil law there in force, would not be affected; nor would the existence of martial law in an enemy's country give the conqueror any more right to interfere with its civil law than he had without it. The right to change the legislation of a conquered people, is a right independent of martial law, and can by the law of nations be exercised with or without it.

Again you propose another remedy. Your words are as follows: "A simple declaration—that all men coming within the lines of the United States troops shall be regarded as freemen, will be in strict conformity to the constitution, and also with precedents. The constitution knows knows no man as a slave."

I know of no such precedents, and you have adduced none. Occasions must have often happened where slaves could on this principle have claimed their liberty, and yet I have never heard of this constitutional mode of manumission, until I saw it in the speech you enclosed to me.—If your proposition is true—can be maintained, slavery can easily be got rid of. It is not necessary to wait for a rebellion, it can be got rid of in time of peace as well as in war.—Your proposition is, that a slave coming within the lines of our army is free, because the constitution knows no man as a slave. This is a remedy that can be resorted to as well in a time of peace as in a time of war.

But is your proposition true? How did the framers of the constitution regard the question? We have their understanding of the constitution in the recognition of slavery in the District of Columbia, and in the Territories of Louisiana and Florida. The men who made the constitution admitted slavery to exist under it, and that, too, in territory from which it is admitted that Congress had the power to exclude it. According to your reading of the constitution, the men who framed it did not understand their own work. Besides, the last Congress repealed this slave code, and made compensation for the slaves emancipated, and in this act admitted the validity of the law allowing slavery in the District. It is too late now to unsay all that has been said on this question by those who have preceded us, whatever may be our own private opinions upon the correctness of this construction. It is for the interest of the Republic that an end should be put to disputed questions sometime, and it would seem that an acquiescence in all branches of the Government from its first adoption in a certain construction of the constitution, ought to settle a disputed question, if ever it can be settled.

It is not true, then, that the constitution knows no man as a slave; it has been held to recognize such persons from the day of its adoption.—This ground then, is no more terrible than the others. Whether we are satisfied with this view of the constitution or not, we, as good citizens, are bound by a construction thus given and acquiesced in by every department of the Government. Such questions when once settled, must stay settled, if we are to enjoy a Government of *law*, in opposition to one of mere *will*, whether that will be the will of one or of many.

Nor would the existence of a mere insurrection justify an interference by the general Government in the domestic policy and legislation of a State. We have had two insurrections. Shays in Massachusetts, and the whiskey insurrection in Pennsylvania. In such cases, it is individuals who act, and none other than themselves can be made responsible. The State Government is, notwithstanding the action of individual citizens, still loyal to the constitution and yielding obedience to it. In such a case, Congress cannot interfere with the legislation of the particular State, or its domestic policy. Loyal men cannot be involved in their criminality, and be made to suffer for it. There is here no social action, for which alone, a whole people can be held responsible.—Hence Congress, even under the war power, could not deprive the loyal part of the community of either their lives, or liberties, or property, on account of the treason of their neighbors. In such case the penalty can alone fall only on the traitor himself. The government in its action alone represents the people in their social capacity, and while that continues to act under and in obedience to the constitution and laws of the United States, the people as a people must be considered loyal, and the State as a State are still under the broad shield of the constitution, which protects each and every State in its exclusive jurisdiction over its local and domestic institutions and laws.

But the present inquiry involves more the mere power of Congress to punish individual traitors. It involves the power of Congress directly to interfere in the local and domestic policy of a State by changing or repealing its laws. The object is not only to affect the interests of the traitors, but also of any loyal men within the rebel States, if there are any such; and to do all this without being compelled to resort to judicial proceedings. In exercising such a power, we make no distinction between the innocent and the guilty, we make them both suffer like. If then we claim for the general Government the right to exercise such a power, we must look for its justification to some other reasons than those already noticed, and we must justify its exercise in the abolition of slavery as one of the righteous penalties for this unholy rebellion. If the constitutionality of the law of Congress, and the President's Proclamation emancipating the slaves cannot be sustained, then, though we crush out the rebellion, this war will have been a failure, for it will leave the seeds of this rebellion in the heart of the nation to germinate into a second war, when the times may be more propitious for its success.—What then, is the state of facts which will justify this interference? What is the law applicable to that state of facts and recognizing the existence of such a power? The facts are the facts involved in the actual condition of the rebellion, and the law applicable to them, is found in the laws of war, which are a part of the law of nations, and hence a part of the law of the United States; since that law is binding on all nations, whatever may be the nature, or form of their respective governments.

By this law, whenever an institution assumes the proportions of a rebellion, having a *de facto* government exercising its jurisdiction over a recognized territory and excluding therefrom the jurisdiction of the rightful government, such a *de facto* government and the people whom it represents are bound by and subject to the laws of war, as the same are applied in war between two independent governments. The law of nationsin this case does not concern itself about the right; it deals only with the *fact* and prescribes the mode and manner, in which such a war ought to be carried on, what each party may or may not do during its vicissitudes, and the rights and liberties of each, if the war is terminated by the subjugation of the rebelllion.

Such is the condition of the rebel States. They have *de facto* State governments as well as a general government, representing them in this, entirely; and all of these *de facto* governments are combined in carrying on a war against the Government of the United States. This state of facts constitute the rebel government a *belligerent power* according to the laws of nations, and as such, bound by that law and responsible to all the penalties which one belligerent power can rightfully inflict upon another. One of these admitted rights in a belligerent power conquering the territory of its enemy in war, is the right to govern that territory absolutely, and to change or repeal its laws at its own will and pleasure. In the exercise of this power, the conqueror has an undoubted right to abolish slavery by repealing all laws authorizing its existence. It is on this ground that I place the justification of Congress in abolishing slavery in the rebel States, and that, too, in strict conformity to the law and the constitution. The rebel government cannot claim the benefits of that law in relation to belligerents without being subject to the rights which that law places in the hands of the successful party.

That this *de facto* rebel government is a *belligerent power* is a *fixed fact*—The claims of the rebel government, and our recognition of those claims, settle the question for us and for them. We treat that *de facto* government as a *belligerent power*, and have done ever since the war was fairly begun. When we captured the first pirates, as we called them, we proposed to try and hang them for piracy, but the *de facto* condition of the rebellion would not permit us to do it; we exchanged these pirates as we believed, for other prisoners of war, and we have been going on ever since in compliance with the laws of war, exchanging traitors in the eye of the law, for the loyal men they may have taken from us. It is now too late for the rebels to shift off the responsibilities which this claim implies, and deny to the rightful Government the powers clearly vested in one belligerent towards another. This view of the law was also recognized by England and France, when they recognized the belligerent character of the rebel government, and declared their neutrality between the two belligerent governments. The writers on the law of nations will be found laying down the same doctrine. I think, then, that the *fact* that the rebel government is a belligerent power, is beyond dispute.

But it is said by some that the States continue to exist as States notwithstanding the rebellion is put down; that a State cannot rebel, and hence cannot forfeit its right to exist as a State. Let us subject this proposition to analysis and see whether it can stand the test of examination. What then is the State? *The State is a body politic, a public corporation*, representing and exercising the *social power* of a given community; its whole action is the action of the whole population through its loyal and recognized agents; hence every people have been held responsible for the action of its government, of the men exercising the powers of its government. We know that a people can carry on war through a rightful government and can carry it on legally in no other way. Now cannot a *defacto* government do what a rightful one can? Cannot South Carolina, *as a State* in its corporate capacity, declare war against the general government, and carry on that war? We know that it has done it. Who then is responsible for these acts? Only the members acting or the people for whom and in whose name they act? The States *as States*, the State governments *as such* are in rebellion in fact; all their governmental powers are being used to carry on this war of rebellion.—The States then as States, the people of the States in their social and corporate capacity, are in rebellion, doing all they can do to carry on this war to a successful termination. By the law of nations, the whole body of a people are held responsible by its belligerent enemy for the acts of its government. No citizen can claim exemption from this responsibility by the plea that he did not approve of what was done, that he did all he could to prevent its being done. Every citizen, whether approving or disapproving of the acts of his government is yet responsible for it. This law is applicable to the rebel States.—These rebel governments are their governments; they represent the people of the several States and have acted for them in this war against the general government, and the people, as a whole, must and can rightfully be held responsible for the action of their *defacto* governments.

What then is the social penalty for social crime? It is not the punishment attached to treason, because that is a personal matter, but the penalty for such crimes is the forfeiture of their right to act in their social capacity, and hence of their right of self-government. Can there be any doubt but that the colonies in our war of the revolution, would have forfeited their colonial charters, if England had succeeded in putting down the rebellion of that day?—But this could not have been done, unless a people may be punished in its social capacity, and the only penalty, which could have been inflicted, was to deprive them of their right of self-government, and subject them to the control and government of the conquering power.—I think there can be no doubt as to the justness of this view of the subject though before reflection, I had a different impression. There must be social responsibility somewhere and it can only be found in the forfeiture of their social rights of self-government. Their *de facto* condition brings them within the scope of this part of the law of nations, and they must meet the consequences.

This view of the question justifies the action of the general government in treating loyal and disloyal alike. It also places the rebel States under its absolute control with the right of governing them as freely as the States themselves possessed that right. Nor can constitutions stand in the way of the exercise of this paramount authority. It would seem too that no power but Congress, as the law making power, can provide for a State government is the creation of Congres, or the people of the States. Unless this is the true doctrine, the States still exist, and the people alone have the power to organize their governments. This would result in leaving the State governments in rebel hands, since a majority of the people in them is composed of rebels; and they would control this recognition and elect the men to execute the same. This strange result cannot be the true one; it must spring from erroneous views. But this result is correct, or the State governments must be forfeited as a penalty of uniting their action in the rebellion.

If the right of self-government is forfeited, then the President cannot re-organize a new government. As military commander he can govern them until Congress shall provide by law for their government, and this is all he can do. He seems to admit by the saving declaration, that Congress may yet refuse to receive their senators and representatives. If however, the President has power to re-organize them as States, then being States, Congress is bound to receive their representatives.—This plan too brings on necessarily a conflict between Congress and the President, since Congress has a right as he admits, to refuse to admit them to be States in a constitutional sense. Such a conflict will be very unfortunate, and hence Congress ought to to anticipate and prevent it by legislating on this whole subject. There are numerous questions growing out of this re-organization.—Are their States to be entitled to the full number of representatives, which the present law of Congress allows them? This apportionment is based on the census of 1860. Are the few loyal men engaged in the reorganization to elect the full quota of representatives? If so, a loyal man in a rebel State will have ten fold more influence in the government than a loyal man in Ohio or Massachusetts does. Is this right? Ought it to be tolerated? Are Southern men to gain political influence, because they have lived with traitors, and under a government of traitors? It would seem that the propounding of these questions ought to be a sufficient answer to them. Congress can alone, provide an adequate remedy for the present condition of these States. It, and it alone, has power to settle these questions on equitable principles, and give to the States at the proper time the due amount of representation, to which they are justly entitled.

My apology for the length of this letter must be found in the vital importance of the questions discussed, and the deep interest I feel in their correct solution. The rebellion brought the *irrepressible conflict* to the test of force; and force now must put an end to it, or we make this war a failure; for, if this conflict is suffered to go on, any peace we may conquer will prove but a hollow *truce*. The rebels have given us a constitutional right to settle this conflict in favor of freedom, and we are bound to do it or prove recreant to the great trial imposed upon this generation. The future of this great nation rests upon the settlement of this question, rightfully settled as it may be, and our future promises a growth and prosperity far outrunning all the experience of the past. Let every true man; every patriot enter cordially in the great work and see to it, that in lieu of *conflict* we shall have harmony, and in lieu of of *war peace* and good will pervading all our future. Yours,

SIMEON NASH.

☞ General McClellan is said to be the soldiers' candidate for the Presidency. Why is it then that all the friends of General McClellan are now endeavoring in the State Legislatures to have the soldiers disfranchised? Governor Seymour is a friend of General McClellan, and we all know that he vetoed the bill allowing New York soldiers to vote in the last State election.

FIVE-TWENTY BONDS.—No more five-twenty bonds will be issued at present, and probably not at all. It is generally believed here that new bonds, running from ten to forty years, will be next issued by Mr. Chase, though the point is not decided.